

MOBIL OIL CORP.
MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC.

IBLA 86-1515

Decided March 14, 1989

Appeal from a decision by the Director, Minerals Management Service, affirming order assessing late payment charges relating to lease OCS 0775, Vermilion Block 131, offshore Louisiana, MMS-84-0006-OCS.

Reversed.

1. Accounts: Payments--Oil and Gas Leases: Royalties

The holder of an Outer Continental Shelf oil and gas lease who timely pays royalty in-kind, rather than in money, may not be assessed a late fee pursuant to 30 CFR 218.150(d), even if it failed to accurately report the volume of the production with the result that the United States failed to collect the proper amount of money when it sold that production to third parties.

APPEARANCES: Daniel P. LeFort, Esq., New Orleans, Louisiana, for appellants; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, for the Minerals Management Service.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Mobil Oil Corporation and Mobil Oil Exploration and Producing Southeast, Inc. (Mobil), have appealed from the March 4, 1986, decision of the Director, Minerals Management Service (MMS), affirming an order assessing late payment charges of \$52,901.92 based on Mobil's failure to file timely and complete reports for condensate produced during the period April 1980 through January 1982 under lease OCS 0775, Vermilion Block 131, offshore Louisiana.

During that period, Mobil paid the royalty due under its lease by making in-kind deliveries to two refiners to whom the United States had sold its share of the production. The United States billed the refiners on the basis of data furnished by Mobil on Form 9-153, although Mobil evidently also correctly reported the volume of production on its monthly report of operations, Form 9-152. 1/

1/ None of these forms is in the administrative record.

In 1983, MMS discovered that Mobil had underreported condensate production from April 1980 through January 1982 on Form 9-153. This discrepancy was discovered during a comparison of the volumes reported on Forms 9-152 and 9-153. Because Mobil had underreported the volume of the in-kind production, the United States had not properly billed the refiners to which it had sold that production. Upon receipt from Mobil of Form 9-2014 correcting the volumes previously underreported on Form 9-153, MMS billed the two refiners for the remainder of the condensate and assessed a late payment charge of \$52,901.92 against Mobil to compensate the United States for the loss of the time value of the money that it would have received from the purchasers had Mobil accurately reported the volumes of production delivered in the first place.

MMS expressly declined to pursue a penalty against Mobil under the Outer Continental Shelf Lands Act, 43 U.S.C. | 1350 (1982), or the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. | 1719 (1982). Instead, MMS based its action on a regulatory provision, 30 CFR 218.150(d), which states that "[l]ate payment charges apply to all underpayments and payments received after the date due." Among other arguments, Mobil submits on appeal that MMS lacks the regulatory authority to make the assessment in dispute.

[1] The regulation relied upon by MMS for imposition of the late charge against Mobil, 30 CFR 218.150(d), reads in full as follows:

(d) Late payment charges apply to all underpayments and payments received after the date due. These charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/permittee/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings. [Emphasis added.]

The underscored portions of the above regulation strongly suggest, as Mobil argues, that as to royalty taken in-kind, the purchasers of such, not the producers of the oil, are looked to by the Department for timely payment of the production purchased and late payment charges for untimely payments. Moreover, it stands to reason, as Mobil argues on appeal, that it is the "royalty-in-kind purchaser which had an obligation to pay the government for the production delivered" and that "if anyone profited from [Mobil's] misreporting, it was the royalty-in-kind purchaser who had possession of this oil for a period of months without having to pay for it" (Statement of Reasons at 3). The provisions of 30 CFR 218.150(d) unambiguously and expressly authorize late payment charges against the purchasers of royalty taken in-kind.

However, we need not decide whether the Department's regulations were intended to include royalty-in-kind payors within the scope of those who may be assessed late payment charges when the United States does not timely

receive full payment from third-party purchasers. Simply stated, late payment charges may not be assessed against appellant in this case because it made no late payments. Nor does MMS assert that Mobil's delivery of royalty in-kind to the refiners was untimely.

The sole error committed by Mobil in this case was the filing of an erroneous production report, which it later corrected. Departmental regulation 30 CFR 218.40(b) authorizes assessments for incorrect reporting as follows: "(b) An assessment of \$10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

David L. Hughes
Administrative Judge